IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	NO. 62891-7-I
	)	
Respondent,	)	DIVISION ONE
	)	
v.	)	UNPUBLISHED OPINION
	)	
ASHLEY MARIE ALEXANDER,	)	
	)	
Appellant.	)	FILED: April 12, 2010
	)	

Leach, J. — Ashley Alexander challenges the restitution order entered after her plea of guilty to disorderly conduct. She claims that the trial court exceeded its statutory authority by imposing restitution for damages caused by an uncharged offense, assault in the third degree, and violated her due process rights by relying upon unsworn hearsay evidence to support its award. She also challenges the sufficiency of the State's evidence. The trial court ordered restitution only for losses that would not have been incurred but for her conduct underlying the crime to which she pleaded guilty, disorderly conduct. To establish the extent of restitution, it relied upon sufficient evidence meeting the due process guaranteed a defendant at sentencing hearings. Therefore, we affirm.

BACKGROUND

The State originally charged Alexander with third degree assault. As part of a plea agreement, the State amended this charge to disorderly conduct, alleged to have been committed by using abusive language and thereby intentionally creating a risk of assault. In her statement on plea of guilty to disorderly conduct, Alexander stipulated that the facts set forth in the certification for determination of probable cause were real and material facts for purposes of sentencing and acknowledged that the State would be seeking restitution from her.

The certification for determination of probable cause establishes the following facts. On the morning of November 6, 2007, Officer Whalen responded to a radio call reporting a domestic violence incident. Whalen identified the automobile involved and pulled behind it as it headed north on Boren Avenue from South Jackson Street. Whalen waited for Officer Zech to arrive before stopping the vehicle.

Whalen approached the stopped vehicle and observed Alexander leaning over her seat. Whalen asked Alexander to turn the car off and step out of the vehicle, but Alexander refused to obey the officer's commands. After Alexander finally exited the car, Whalen asked Alexander to place her hands on the car, but she refused. Both Whalen and Zech noticed that Alexander was making a fist with her car keys sticking through her fingers, and both officers believed that Alexander might be contemplating using the keys as a weapon.

When Whalen grabbed a hold of Alexander's arm, Alexander pulled it away, yelling, "Don't touch me. Do not touch me. Get you[r] hands off of me!" As Whalen continued her attempt to control Alexander, Alexander yelled, "Oh my God! What the fuck are you doing you dumb bitch? Get off of me! Get off of me. Get off of me." When Zech told Alexander to stop fighting, she responded, "I'm not going to cooperate with you."

The altercation escalated, and Alexander twice kicked Whalen directly in the face. Whalen and Zech were eventually able to take Alexander to the ground, though Alexander continued to struggle and kick. A civilian witness then came to the officers' assistance and helped subdue Alexander until more officers arrived.

Officer Aagard, who arrived as backup, read Alexander her Miranda[1] rights and asked why she fought Whalen. Alexander replied, "They don't have any right to stop me and come at me like that." Alexander also admitted to having hit Whalen. Then she stated, "What is the difference when I hit a cop or when they hit me? We are all at the same level."

Shortly after the incident, Whalen began suffering dizzy spells and hearing loss. She sought medical treatment, and her symptoms eventually abated. She also missed work due to her injuries.

The State sought restitution, to be paid to the City of Seattle Workers

[1] Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

Compensation Unit, for amounts it paid for the time Whalen was unable to work and for her medical expenses. A restitution hearing was held in November of 2008.

At the hearing, Whalen testified that initially she suffered soreness to her neck and shoulder, and a short time later, dizzy spells and ringing in her ears. At first, she assumed the symptoms would eventually go away. But over the course of the next few days, the symptoms worsened. She decided to see a doctor, who prescribed pain-killers and told her not to drive a car. Whalen missed more than one month of work before being able to return to duty. She also testified that she suffered no intervening injuries after the fight and that she had never sought treatment for similar symptoms before her encounter with Alexander. In addition to this testimony, the State presented time loss and medical payment records, diagnosis and treatment codes, and health insurance claim forms submitted by health care providers that identified date of injury, date of treatment, and services by diagnosis and treatment codes.

The trial court ordered restitution in the full amount requested: $5,336.82 for time loss and $1,198.40 for medical expenses.

Alexander appeals.

STANDARD OF REVIEW

A court's authority to impose restitution derives solely from statutes.[2] The

[2] State v. Davison, 116 Wn.2d 917, 919, 800 P.2d 1374 (1991).

scope of a court's statutory authority to impose restitution is a legal question that we review de novo.[3]

We review a restitution order within the trial court's statutory authority for an abuse of discretion.[4] A court abuses its discretion when it exercises it in a manifestly unreasonably manner or on untenable grounds.[5]

ANALYSIS

Alexander first contends that we should reverse the restitution order because the amounts awarded were not causally related to her charged offense, disorderly conduct.

Disorderly conduct is a misdemeanor offense.[6] RCW 9.92.060(2)(b) and RCW 9.95.210(2)(b) confer authority on the trial court to order restitution for misdemeanor offenses.[7] Both statutes include the following provision, which provides alternate grounds for imposing restitution:

> [T]he superior court may [also] require the convicted person [or defendant] . . . to make restitution to any person or persons who may have suffered loss or damage by reason of the commission of the crime in question or when the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which are not prosecuted pursuant to a plea agreement.[8]

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[3] State v. Kinneman, 122 Wn. App. 850, 857, 95 P.3d 1277 (2004), aff'd 155 Wn.2d 272, 119 P.3d 350 (2005).

[4] State v. Thomas, 138 Wn. App. 78, 81, 155 P.3d 998 (2007).

[5] Kinneman, 122 Wn. App. at 857 (citing State v. Enstone, 137 Wn.2d 675, 679-80, 974 P.2d 828 (1999)).

[6] RCW 9A.84.030.

[7] Thomas, 138 Wn. App. at 81-82.

[8] RCW 9.92.060(2)(b); RCW 9.95.210(2)(b).

Under the first alternate ground, the court must base its award on the "crime in question," the one for which the defendant was convicted.[9] Restitution, however, is not necessarily limited by the definition of the crime of conviction.[10] Instead, the question is whether the conviction establishes an underlying criminal act that is causally related to the restitution imposed.[11] That is, "but for the criminal acts of the defendant, the victim would not have suffered the damages for which restitution is sought."[12]

In determining whether this causal connection exists, the court examines only those facts admitted by the plea agreement, or admitted, acknowledged, or proved in a trial or sentencing hearing.[13] If a defendant disputes material facts pertinent to restitution, the sentencing court must either ignore the disputed facts or hold an evidentiary hearing where the State bears the burden of proving damages by a preponderance of the evidence.[14]

State v. Thomas[15] is instructive. There, a jury found Thomas guilty of driving under the influence of alcohol (DUI). Although Thomas' driving resulted

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[9] State v. Woods, 90 Wn. App. 904, 907, 953 P.2d 834.

[10] State v. Taylor, 86 Wn. App. 442, 445, 936 P.2d 1218 (1997), (noting that restitution is not limited by the definition of the crime), overruled on other grounds by State v. Enstone, 137 Wn.2d 675, 974 P.2d 828 (1999).

[11] Taylor, 86 Wn. App. at 445 ("In determining whether a causal connection exists we look not to the name of the crime, but to the underlying criminal act established by the conviction.").

[12] State v. Landrum, 66 Wn. App. 791, 799, 832 P.2d 1359 (1992) (interpreting a different but similar restitution statute).

[13] State v. Dedonado, 99 Wn. App. 251, 256, 991 P.2d 1216 (2000).

[14] Dedonado, 99 Wn. App. at 256.

[15] 138 Wn. App. 78, 155 P.3d 998 (2007).

in a motor vehicle accident that seriously injured her passenger, the jury failed to find her guilty of vehicular assault. The trial court found that the passenger's injuries were causally related to the defendant's DUI and ordered her to pay restitution for her passenger's medical expenses.[16] The Court of Appeals affirmed, reasoning that the law allows "the sentencing court [to] order the defendant to pay the actual amount of loss caused by the crime to any person damaged; neither the name of the crime nor the named victims limit the award."[17]

Here, Alexander pleaded guilty to a reduced charge of disorderly conduct, and as part of this plea, she stipulated to the facts set forth in the certification for determination of probable cause. This document describes an event that took place on November 6, 2007, where Alexander used abusive language and kicked Officer Whalen in the head. Based on this record, we conclude that Alexander's conviction for disorderly conduct, like Thomas's conviction for DUI, establishes an underlying criminal act sufficiently connected to the restitution ordered.

Alexander insists that Thomas conflicts with controlling case law. She cites State v. Eilts,[18] where our Supreme Court held that the "phrase 'crime in question' [in RCW 9.95.210(2)(b)] refers only to the specific crime or crimes of which a defendant is charged and convicted." Alexander contends that this

[16] Thomas, 138 Wn. App. at 81.
[17] Thomas, 138 Wn. App. at 83.
[18] 94 Wn.2d 489, 493, 617 P.2d 993 (1980).

language limits restitution to only those damages connected directly to the elements of the charged offense, in this case, disorderly conduct.

But nothing in Eilts suggests that a sentencing court is precluded from imposing restitution for injuries arising from a criminal act simply because the prosecutor could have exercised his or her discretion to charge additional or greater offenses. In Eilts the court addressed whether statutory authority existed to order restitution for 87 victims of a securities fraud scheme where the State charged and proved that the defendant had defrauded only 7 named investors.[19] The court focused on the fact that each of the seven counts described culpable acts of the defendant directed toward a specifically named victim and not the public.[20] Thus, the 7 convictions failed to provide a sufficient basis for imposition of restitution for all 87 separate fraud victims because the 7 crimes proved did not constitute a single scheme to defraud the public. Because Eilts addresses restitution for different victims of different acts than those charged, it does not advance Alexander's position.

The language of the relevant statutes provides no support for Alexander's argument. To the contrary, her proposed reading of these statutes conflicts with the legislature's intent. The various restitution statutes evidence "'a strong public policy to provide restitution whenever possible.'"[21] To implement this

[19] Eilts, 94 Wn.2d at 491, 494-95.

[20] Eilts, 94 Wn.2d at 495 ("While evidence of an overall scheme is present, the individual counts alleged in the information do not constitute a single scheme to defraud the public for purposes of RCW 9.95.210.").

intent, we interpret restitution statutes broadly in favor of restitution absent clearly expressed legislative language to the contrary.[22] Limiting restitution to the elements of the crime charged, as Alexander urges, would frustrate the legislature's resolve to restore victims' losses, restrict a prosecutor's ability to negotiate plea agreements, and permit defendants to escape reasonable consequences of their criminal conduct.[23]

None of the other cases cited by Alexander—State v. Hartwell,[24] State v. Woods,[25] State v. Dauenhauer,[26] and State v. Miszak[27]—dictate a different

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[21] Thomas, 138 Wn. App. at 82 (quoting State v. Shannahan, 69 Wn. App. 512, 518, 849 P.2d 1239 (1993)).

[22] Thomas, 138 Wn. App. at 82 (discussing RCW 9.92.060(2) and 9.95.210(2)).

[23] See State v. Selland, 54 Wn. App. 122, 125, 772 P.2d 534 (1989) (arriving at a similar conclusion); State v. Johnson, 69 Wn. App. 189, 193, 847 P.2d 960 (1993).

[24] 38 Wn. App. 135, 140, 684 P.2d 778 (1984) (reversing restitution imposed for leaving the scene of the accident because "[t]he victims' injuries . . . were not caused by 'the precise event that is the basis for the charge.' The injuries occurred in the accident which happened before . . . the offense with which [Hartwell] was charged" (quoting State v. Bedker, 35 Wn. App. 490, 493, 667 P.2d 1113 (1983))), overruled on other grounds by State v. Krall, 125 Wn.2d 146, 881 P.2d 1040 (1994).

[25] 90 Wn. App. 904, 909-10, 953 P.2d 834 (1998) (reversing restitution ordered for personal property taken from a stolen vehicle when defendant was charged with possessing the stolen vehicle because possessory crimes are neither sufficiently nor necessarily related to the lost personal property).

[26] 103 Wn. App. 373, 379, 12 P.3d 661 (2000) (reversing restitution order for damages caused to perimeter fence and automobile because the facts underlying the charge of burglary in the second degree were causally unconnected from the events underlying these later incurred damages).

[27] 69 Wn. App. 426, 428, 848 .P.2d 1329 (1993) (holding that it was improper to order restitution for 13 items of jewelry allegedly stolen "systematically" over a period of "weeks" when the defendant pleaded guilty to taking only "an item of jewelry" on a specified day).

result. These cases, like Eilts, stand for the proposition that a sentencing court is precluded from imposing restitution for the defendant's "general scheme" or separate acts merely "connected with" the crime charged.[28] Put differently, a sentencing court errs when imposing restitution for damages arising from acts separate from the one underpinning the defendant's criminal conviction unless the defendant pleads guilty and agrees to pay restitution.[29]

In summary, the fact that Alexander pleaded guilty to disorderly conduct instead of assault in the third degree does not change the nature of the underlying criminal act established by stipulated facts described in the probable

[28] Miszak, 69 Wn. App. at 428.

[29] See Taylor, 86 Wn. App. at 446 (reversing a restitution order because the jury's verdict of welfare fraud in the second degree instead of fraud in the first degree as charged meant that the conviction could not serve as a basis for restitution above $1500).

cause certificate.[30] Nor does it alter the extent of Alexander's restitution liability for damages caused by her actions.

Under the facts of this case, we conclude that the sentencing court had statutory authority to impose restitution for damages causally connected to Alexander's assault on Whalen.[31]

Alexander next claims that the State presented insufficient evidence to establish a causal connection between the amount of restitution sought and her criminal conduct. The State must establish the amount of restitution by a preponderance of the evidence.[32] The evidence must be "'substantial credible evidence'" which "'does not subject the trier of fact to mere speculation or conjecture.'"[33] Evidence is sufficient under this standard if the State provides the trial court with a reasonable basis for estimating the victim's loss.[34]

For example, in State v. Blanchfied, [35] the trial court imposed restitution

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[30] See, e.g., State v. S.T., 139 Wn. App. 915, 919, 163 P.3d 796 (2007) (affirming restitution for lost personal property under a similar statute where defendant pleaded guilty to attempting taking of a motor vehicle because the facts stipulated to in the probable cause certificate bore out both a completed and attempted taking).

[31] Because we rest our opinion on the first alternate ground in RCW 9.92.060(2)(b) and RCW 9.95.210(2)(b), we do not reach Alexander's related argument that the State failed to prove that she expressly agreed to pay restitution for the uncharged crime in her plea agreement.

[32] State v. Burmaster, 96 Wn. App. 36, 51, 979 P.2d 442 (1999).

[33] State v. Kisor, 68 Wn. App. 610, 620, 844 P.2d 1038 (1993) (quoting State v. Fambrough, 66 Wn. App. 223, 225, 831 P.2d 789 (1992)).

[34] State v. Fleming, 75 Wn. App. 270, 274, 877 P.2d 243 (1994), overruled on other grounds by Washington v. Recuenco, 548 U.S. 212, 126 S. Ct. 2546, 165 L. Ed. 2d 466 (2006).

[35] 126 Wn. App. 235, 239, 108 P.3d 173 (2005).

for the victim's medical expenses incurred as a result of a domestic violence incident. Blanchfield argued on appeal that the victim's testimony along with the Crime Victims Compensation (CVC) Program report were insufficient to establish a causal connection between the medical expenses and the assault.[36] The court disagreed, noting that the victim's testimony corroborated the CVC Program report and established that her emergency room and follow-up doctor visits were necessitated by the assault.[37] Accordingly, the court affirmed this part of the restitution order.

Like the victim in Blanchfield, Officer Whalen testified at the sentencing hearing. She testified that she suffered a split lip, sore jaw, and sore shoulder, and that shortly after the altercation, she began suffering dizzy spells and ringing in her ears. She also indicated that she had not experienced these symptoms before the incident and that they got progressively worse over the next few weeks. She experienced no other intervening events which could explain her symptoms. She also testified that she sought medical treatment, was advised not to go to work, and returned to work promptly after her symptoms abated. This testimony corroborated the State's documentary evidence, which included workers' compensation time loss and medical payment histories, code keys for medical diagnosis and treatment, and health insurance claim forms submitted by providers describing the injury date, diagnosis, and treatment by

[36] Blanchfield, 126 Wn. App. at 241-42.
[37] Blanchfield, 126 Wn. App. at 242.

code number, and charges for the treatment.

The uncontradicted evidence provided by Whalen's testimony, health insurance claim forms, and workers' compensation records provided the trial court with a sufficient and reasonable basis for estimating Whalen's loss. The State met its burden of proof.

Alexander attempts to analogize the facts of this case to a number of other cases—State v. Dedonado,[38] State v. Bunner,[39] and State v. Hahn[40]—where restitution orders were reversed for a failure to prove the causal connection. Her reliance on these cases is misplaced. In each instance, the restitution order was reversed because the only evidence considered was a summary report of expenditures. As summarized above, the State relied on much more than a simple summary expenditure report.

Finally, Alexander claims that the State's reliance on hearsay evidence violated her right to due process of law.

Although traditional evidence rules do not apply at restitution hearings, due process requires that the defendant have an opportunity to rebut the

[38] 99 Wn. App. 251, 257, 991 P.2d 1216 (2000) ("A causal connection is not established simply because a victim or insurer submits proof of expenditures for replacing property stolen or damaged . . . . Such expenditures may be for items of substantially greater or lesser value than the actual loss.").

[39] 86 Wn. App. 158, 160, 936 P.2d 419 (1997) (error to order restitution based on Department of Social and Health Services summary report of medical expenditures).

[40] 100 Wn. App. 391, 400, 996 P.2d 1125 (2000) (error to order restitution based on Department of Social and Health Services summary report of medical expenditures).

evidence presented.[41] Accordingly, when "evidence is comprised of hearsay statements, the degree of corroboration required by due process is not proof of the truth of the hearsay statements 'beyond a reasonable doubt,' but rather, proof which gives the defendant a sufficient basis for rebuttal."[42]

Alexander relies on a single case, State v. Kisor.[43] There, an order requiring the defendant to pay restitution for shooting a police dog was reversed because the State's evidence, an uncorroborated affidavit setting out a rough estimate of the costs associated with purchasing and training a new animal, deprived the defendant of a sufficient basis for rebuttal.[44]

Kisor, however, is distinguishable. Here, the State provided detailed billing records and actual payment histories well in advance of the restitution hearing. Alexander declined an opportunity to cross-examine Whalen at the restitution hearing. Further, Alexander demonstrated no effort to procure any evidence, such as Whalen's medical history or workplace documents, questioning the veracity of the State's evidence. We conclude that the evidence presented was "substantial credible evidence" and that Alexander had a sufficient basis for rebuttal.[45]

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[41] Kisor, 68 Wn. App. at 620 (quoting Fambrough, 66 Wn. App. at 225).

[42] Kisor, 68 Wn. App. at 620 (citing State v. S.S., 67 Wn. App. 800, 807-08, 840 P.2d 891 (1992)).

[43] 68 Wn. App. 610, 844 P.2d 1038 (1993).

[44] Kisor, 68 Wn. App. at 620.

[45] We note that the documents submitted by the State at the restitution hearing would be presumptively admissible in a civil action to recover up to $50,000 from Alexander. See MAR 5.3(d).

CONCLUSION

We affirm because (1) the stipulated facts described in the certification for determination of probable cause establish a sufficient causal connection between Alexander's criminal conduct underlying her disorderly conduct conviction and the restitution ordered, (2) the State met its burden of proving the causal connection between this criminal conduct and the amount of restitution ordered, and (3) the hearsay evidence presented by the State did not deprive Alexander of due process because it provided her with a sufficient basis for rebuttal.[46]

Leach, J.

WE CONCUR:

Dwyer, A.C.J.

Schindler, C.J.

[46] Alexander also submitted a statement of additional grounds for review. Because she asserts a version of events largely consistent with the events described in the certification for determination of probable cause, and she stipulated to the events as described in the certificate, we find no basis for reversal.